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September 19, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 15, 2007

Case Number: TSO-0498

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (the Individual) to possess an access authorization under the Department of Energy (DOE) regulations entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.^{2/} After reviewing the evidence before me, I find the Individual's access authorization should not be restored.

I. Background

In 1998 and 2002, the Individual was arrested and charged with Driving While Intoxicated (DWI). Following a DOE Consulting Psychiatrist's diagnosis of alcohol abuse, the Individual's access authorization was suspended in September 2003. After an Administrative Hearing, the Individual's clearance was restored in June 2005. *Personnel Security Hearing*, 29 DOE ¶ 82,806 (April 5, 2005) (Case No. TSO-0107). Following the Hearing, the Individual again began consuming alcoholic beverages. He received a DWI on September 3, 2005.

On November 27, 2006, the Individual was referred to a second DOE Consulting Psychiatrist. The Individual failed to appear for his interview. The DOE Consulting

^{1/} 10 C.F.R. Part 710, Subpart A.

^{2/} 10 C.F.R. § 710.5(a).

Psychiatrist reviewed the Individual's Personnel Security File and wrote an evaluative report.^{3/} In the report, she diagnosed the Individual as alcohol dependent.^{4/}

On March 27, 2007, the Local Security Office issued a Notification Letter to the Individual. The Notification Letter found the incidents described above and the two DOE Consulting Psychiatrists' diagnosis created a substantial doubt as to the Individual's eligibility for an access authorization under Criteria H^{5/} and J.^{6/} Upon receipt of the Notification Letter, the Individual requested a hearing. The OHA Acting Director appointed me as the Hearing Officer in this case.^{7/} I convened a hearing in this matter.^{8/}

At the hearing, the Individual represented himself. He offered his own testimony. The Local Security Office presented the second DOE Consulting Psychiatrist as a witness. The local DOE Office entered 22 exhibits into the record. The Individual entered 4 exhibits into the record.

II. The Hearing

A. The Individual

At the hearing, the Individual testified that he stopped consuming alcoholic beverages on May 30, 2007. Hearing Transcript (Tr.) at 10. He declared that he does not have any desire to consume alcoholic beverages now or in the future. Tr. at 10. He stated that if not being able to drink makes him alcohol dependent, then he is alcohol dependent. Tr. at 11. He testified that he used alcohol as a crutch. Tr. at 12. He knows that he needs to associate with new people who do not drink and partake in activities that do not involve alcohol. Tr. at 13.

The Individual testified that he has been attending Alcoholics Anonymous (AA) for two weeks. Tr. at 11. He has attended 2 meetings a week. Tr. at 11. He testified that he is trying to get a sponsor. Tr. at 11.

^{3/} DOE Ex. 8.

^{4/} *Id.* at 29.

^{5/} 10 C.F.R. § 710.8(h).

^{6/} *Id.* at § 710.8(j).

^{7/} 10 C.F.R. § 710.25(a), (b).

^{8/} 10 C.F.R. § 710.25(g).

B. The DOE Consulting Psychiatrist

At the hearing, the DOE Consulting Psychiatrist confirmed her diagnosis that the Individual is alcohol dependent. Tr. at 26. She stated that this was the first time she had done a diagnosis based only upon a record review. She is confident in the accuracy of her diagnosis because of the detailed nature of the record. Tr. at 26. She is concerned that the Individual is still in the initial stages of understanding his alcohol problem. Tr. at 36. She testified that the Individual needs to gain full insight into the nature of his alcohol problem in order to be considered rehabilitated. Tr. at 36.

III. *Standard of Review*

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility."^{9/} After a question concerning an individual's eligibility for an access authorization has been properly raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." See 10 C.F.R. § 710.27(a).

In considering the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in the regulations: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. 10 C.F.R. § 710.7(c).

IV. *Findings and Conclusions*

My review of the testimony presented in this case, as well as the other evidence contained in the record, leads me to find that the Individual has an alcohol problem that raises a security concern. After a question concerning an individual's eligibility for an access authorization has been properly raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access

^{9/} 10 C.F.R. § 710.10(a).

authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” See 10 C.F.R. § 710.27(a).

At the time of the hearing the Individual’s testimony indicated that he is beginning his reformation and rehabilitation process. He has a counselor and he has begun attending AA. At the time of the hearing, the Individual testified that he has been abstinent for only two months. I find, based on the DOE Consulting Psychiatrist’s opinion, that a two month period is far too short for the Individual to be considered reformed or rehabilitated.

Therefore, I conclude that the Individual has not demonstrated that his alcohol-related problems are unlikely to recur. The Individual provided little evidence on his rehabilitation and no corroboration to his two month period of abstinence. His testimony that he has been abstinent for two months and has started attending AA does not convince me that he is committed to the rehabilitation process. The DOE Consulting Psychiatrist was persuasive. She stated at the hearing, that his chance of relapse is high. Consequently, I find that the security concerns raised by the diagnosis that the Individual is alcohol dependent have not been mitigated.

V. Conclusion

Upon consideration of the record in this case, I find that the Criteria H and J security concerns regarding the Individual’s eligibility for a security clearance have not been mitigated. Accordingly, I conclude that the Individual has not shown that restoring his access authorization would not endanger the common defense and security. Therefore, restoration of his access authorization would be clearly inconsistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual’s access authorization should not be restored. The Individual may seek review of this decision by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: September 19, 2007